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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,980	07/29/2005	Frederic Perot	P-5766	5213
7590 David W Highet Becton Dickinson and Company MC 110 1 Becton Drive Franklin Lakes, NJ 07417-1880		EXAMINER WITCZAK, CATHERINE		
		ART UNIT 3767		PAPER NUMBER
		MAIL DATE 02/18/2010		DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/520,980

**Applicant(s)**

PEROT ET AL.

**Examiner**

CATHERINE N. WITCZAK

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 12-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of claim 12 that the syringe 'might' have a proximal flange or lateral tabs encompasses a system in which the syringe to be used in the device claimed does not have a flange or lateral tabs. However, a device comprising all the elements from the claims from which claim 12 depends and which includes a syringe without a flange or lateral tabs is not in the specification as originally filed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-6 and 8-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. Claims 2, 5, and 20 recite the limitation "the adapter". There is insufficient antecedent basis for this limitation in the claim as none of the claims positively recite the device comprising an adapter.
3. Claims 4, 9, and 14 recite the limitation "the needle". There is insufficient antecedent basis for this limitation in the claim as none of the claims positively recite the device comprising a needle.

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4. Claims 12, 15, 17, and 20 recite the limitation "the syringe". There is insufficient antecedent basis for this limitation in the claim as none of the claims positively recite the device comprising a syringe.
5. Claim 9 recites the limitations "the hole" and "the wall". There is insufficient antecedent basis for these limitations in the claim.
6. Claim 11 recites the limitation "the at least one proximal transverse wall ". There is insufficient antecedent basis for this limitation in the claim.
7. Claim 12 recites the limitation "the proximal flange or lateral tabs". There is insufficient antecedent basis for this limitation in the claim.
8. Claim 13 recites the limitation "the proximal flange or lateral tabs". There is insufficient antecedent basis for this limitation in the claim. Claim 12, from which claim 13 depends, does not positively recite a proximal flange or lateral tabs. Since the claim recites that the syringe 'might' have a proximal flange or lateral tabs, it encompasses an embodiment where the syringe does not have a proximal flange or lateral tabs, and thus would not provide sufficient antecedent bases for the limitation of claim 13.
9. Claim 17 recites the limitation "the housing that accommodates the syringe body". There is insufficient antecedent basis for this limitation in the claim.
10. Claim 20 recites the limitation "the flange ". There is insufficient antecedent basis for this limitation in the claim as none of the claims positively recite the device comprising a flange.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-6 and 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stine (US 4,594,073) in view of Nolan, Jr et al (US 6,743,205) .

Stine teach in Figure 14 an accessory body having an elastic zone (space between 315 and 318) arranged between a proximal and distal end configured to expand in the longitudinal direction from a first rest position to a second position (wherein it is the Examiner's position that the term elastic can be reasonably interpreted as 'being able to adjust readily to different conditions' and since Stine teaches the device being easily adjustable to accommodate syringes of various lengths, Stine teaches a device meeting the claimed limitations); a first holding means (315) having a wall positioned at the distal end; a second holding means for a barrel flange positioned at a proximal end comprising a housing with a bearing zone delimited by two parallel transverse walls (317 and 318); the elastic zone comprising a curved portion (312).

Stine discloses the claimed invention except for the wall of the first holding means comprising at teeth surrounding an opening hole, the wall comprising at least one slot which opens to the hole such that the needle can be engaged laterally; wherein the slot opens in roughly the same direction as the opening to a housing for a barrel flange. Nolan, Jr et al disclose in Figures 4, 8 and 9 that it is known to incorporate teeth surrounding an opening hole, the wall comprising at least one slot which opens to the hole; wherein the slot opens in roughly the same direction as an opening to a housing for a barrel flange. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify to the device of Stine with a holding means having teeth surrounding an opening hole, the wall comprising at least one slot which opens to the hole; wherein the slot opens in roughly the same direction as an opening to a housing for a barrel flange as taught be Nolar, Jr et al since such a modification would protect the interface between the device and syringe while also facilitating insertion and removal of a syringe from the syringe adapter (column 12, line 5-9).

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERINE N. WITCZAK whose telephone number is (571)272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Catherine N Witczak/

Examiner, Art Unit 3767

/Kevin C. Simons/

Supervisory Patent Examiner, Art Unit 3767